

7.09.00.00 - DAMAGES, BENEFITS, CONTRACT WORK

7.09.01.00 General

The possibility of damages and benefits will be investigated in every partial acquisition. This investigation will include local market data, similar after condition land development, and other applicable sources.

Any damages and/or benefits will be supported, and clearly documented in the parcel appraisal. Severance damages and benefits will be shown as separate totals. Benefits, if any, will be subtracted from severance damages. Any net benefits or damages will be shown separately.

The results and support of the investigation which reveals that no damages and/or benefits occur must be shown in the Report. Such a study may materially assist negotiations in cases where unsubstantiated claims for damages might be made.

Benefits which result because of construction of the project in the manner proposed should be described, valued, and supported even though no damages result. The benefits may presently be incapable of being valued. The nature of the benefits should then be described in the appraisal. Legal opinions should be secured when there is a doubt regarding compensable damages or the distinction between general and benefits.

If the appraisal contains noise damage, written assurance from Project Development will be included stating that no noise attenuation measures are included in the proposed construction plans.

7.09.02.00 Severance Damages

Severance damage is a loss in value of remaining property after acquisition and construction in the manner proposed. Severance damages are valued

by appraisal of the remainder as a portion of the total property in the before condition and as a remainder in the after condition (disregarding the benefits of the construction project). The remainder is considered damaged if worth less after the project construction because of a legally compensable reason. The after value appraisal requires the same support as the before value appraisal. Consideration should be given to when the damages will occur (Code of Civil Procedure Sections 1263.420 and 1263.440).

The parcel appraisal must state specifically the reasons for the severance damage and discuss the comparable data or investigation results supporting the severance damage estimate. Comparable data used will be referenced under the heading "Market Data (After)."

Generally, any severance damages to a larger parcel functioning as a unit, especially under an agricultural use, will be measured by any decrease in market value of the remainder(s) (People vs. Lundy). Under very narrowly described circumstances, damages to the continued operation of the remainder(s) as a unit may be considered (People vs. Cozza). These are such items as increased cost, difficulty and hazard. If this form of damages is considered applicable, the Region/District must furnish particulars to HQ RW Appraisal Branch, and request a legal opinion prior to completion of the appraisal.

Damages to the remainder caused by either or both the severance of the remainder from the part taken, and the construction and use of the project for which the property is taken in the manner proposed by the plaintiff, whether or not the damage is caused by a portion of the project located on the part taken, are compensable (Code of Civil Procedure 1263.420).

7.09.03.00 **Noncompensable Damages**

The following types of damages have been found by the courts not to be compensable, or in certain respects may be compensable only under laws other than those of eminent domain. Therefore, they should not be included in staff real property acquisition reports:

A. Damages to business

However, loss of goodwill is compensable if proven by the owner. Handling of such losses is treated under Section 7.17.00.00.

B. Expenses for moving personal property

However, displaced property owners and tenants may be entitled to payment for moving personal property under the Relocation Assistance Program.

C. Temporary damage to the use and occupancy of property reasonably incident to construction requirements. Unnecessary and substantial interference may be compensable.

D. Damages due to annoyances and inconveniences suffered by the public generally.

Exceptions to this may be diminution in property value of the remainder caused by noise, fumes, and/or other annoyances inherent in the daily use of a freeway.

E. Circuity of travel caused by dividing a highway.

F. Rerouting or diversion of traffic or changing of a two-way street to a one-way street.

G. In general, all those types of damages which can be considered to be conjectural, speculative, and remote.

7.09.04.00 **Cost to Cure**

Some severance damage may be mitigated or entirely eliminated by estimating the cost to cure the damage. The appraiser must first show the total estimated severance damages to the remainder which would occur if not cured. Then, there must be an estimate of the cost to cure which may not exceed the estimated severance damages. Since cost to cure damages are severance damages, they are to be offset by any benefits.

The sources used for the estimated cost to cure must be shown in the appraisal report in accordance with Section 7.05.04.00 relating the documentation of cost estimates. Cost to Cure is a "method" of measuring all or part of the severance damages that may be incurred.

7.09.05.00 **Benefits**

Benefits are valued by appraising of the remainder before and after the taking and highway construction of the project in the manner proposed. Consideration should be given to when the benefits will occur. (See CCP Sections 1263.430 and 1263.440.)

The appraiser must provide the reason with adequate support for any estimated benefits.

Benefits are to be offset against any severance damages in the Report. When excess benefits remain after the offset against severance damages, the excess benefits shall be shown in the Report. Benefits can be used to offset any loss of goodwill that may occur to a business located on the property if owned by the fee owner. (See CCP Section 1263.410.)

Also, if benefits are estimated to occur to the remainder, such benefits will be quantified and shown in the appraisal report even though there are no severance damages to the remainder.

7.09.06.00 **Summary of Severance
Damages and Benefits**

Severance damages and/or benefits shall be summarized on a before-and-after value basis in the appraisal report. Form RW 7-12 shall be used for the summary.

In cases where severance damages and/or benefits are relatively minor, it will not be necessary to include a before-and-after value summary.

7.09.07.00 **Damage Alternatives**

The "Summary of Damage Alternatives" and "Discussion of Damages" (Exhibit 7-EX-6) is a suggested format to be used in comparing practical alternative damage approaches and discussing damage elements.

The "Discussion of Damages" will be used in cases where damages, other than minor adjustment curative work, are present. The Summary may be used, when necessary, for clarity.

If no feasible curative work alternative can be proposed to mitigate severance damages, the Discussion of Damages will so state. If severance damage estimates by before-and-after appraisals are inconclusive, or are impractical due to the size or nature of the remainder, or the cost of curing the severance is the best measure, the Discussion will give the reasons for the approach used. If the severance damages are valued by market comparison, the Discussion will reference the comparable data used and explain the comparison. If the market data are inconclusive as a basis for estimation of damages, the Discussion should include a description of the scope of the market investigation and the reason supporting the opinion of damages.

These formats should be used to substantiate purchase of excess land except for: (1) landlocked remainders, (2) properties with major improvements straddling the right of way line, (3) sites reduced below zoning minimums, (4) public utility or governmental properties. Even in these exceptions, comments should describe investigations of curative work possibilities and reasons for rejections.

7.09.08.00 **Utility Service Damage**

The grantor must be fully compensated for all justified damages due to relocation of utilities including payment for severing water, sewer, and gas lines and wiring extending into the right of way area, if such work is to be performed by grantor.

7.09.09.00 **Construction Contract Work**

Occasionally, work in or outside of the highway right of way is required to restore the utility of remaining property (i.e., cattle pass, utility sleeve, road/driveway approach) and may most economically and/or practically be done by the State's highway contractor. The work and cost will be described as "Construction Contract Work." The feasibility and cost of the proposed work must be estimated or verified by Region/District Project Development prior to submission of the appraisal. The sources for other than small, routine estimated costs will be included in the Report and documented in the Region/District's appraisal file. The cost must be justified by the value of the remainder and must be less than the potential damage which would occur if the construction work was not done.

Only work for grantor's benefit to the remainder is valued as "Construction Contract Work." It is a form of a damage payment. Work of greatest benefit to the public or required by the highway construction will not be classified as "Construction Contract Work."

The appraisal must clearly show the computations and explain the reasons for proposing construction contract work not being offset when benefits are present. Minor construction contract work for driveway reconstruction, domestic utility reconnections, etc., should be proposed regardless of benefits being present.

Construction contract work also includes curative work for a remainder which is to be performed by a right of way Clearance contractor or public utility agency. The feasibility and cost of the proposed work will be estimated or verified by the Region/District Property Management or Utility Clearance Branches prior to submission of the appraisal.

The Appraisal Page will show a "Construction Contract Work" heading for all partial acquisitions. The heading will show the remark "None Required," or a description and valuation of required construction contract work, including proposed engineering station location. The total of all construction contract work will be carried forward to the Parcel Summary Page.

Construction contract work can benefit more than one property. The total amount will be split among the various properties at the amount of benefit each receives. A reference will be made in each parcel appraisal that the construction contract work benefits other parcels.

7.09.10.00 **Utility Main Relocations**

Relocation of utility transmission lines up to the point of owner's service is usually included in agreements with the utility company. Such relocations need not be considered in the parcel appraisal, with the one exception of extension of utility mains for the sole benefit of few properties remaining after State acquisition. In these cases, the utility main relocation costs must be justified by the values of the affected remainders.

If payment of severance damages or purchase of remainders is less costly, it should be proposed.

7.09.10.01 **Private Utility Connections**

The relocation of private connections can be handled in one of the following ways:

- Reconnection by the grantor through a damage payment.
- Reconnection by the utility company as part of the utility agreement.

- Reconnection by the highway contractor.
- Reconnection by a right of way clearance contractor.

The appraisal is to anticipate how private relocations and reconnections are to be accomplished, whenever possible. The estimated cost for work performed by the grantor will be shown as a "Damage." Reconnection by any other means will be shown as "Construction Contract Work." If construction plans or utility company plans are incomplete, the appraisal will describe the various utility services and discuss possible relocation and reconnection requirements, problems, if any, and estimated costs.

It will also describe the parcel's utility sources and possible relocation requirements, if any. These instructions include grantor-owned well water, sewerage, and other utility systems.

7.09.11.00 **Access Openings**

All proposed openings in access restrictions which allow direct private access to the highway (either permanent, temporary, or locked gate) will be listed on the Appraisal Page under the heading "Access Openings." Do not list public road openings included in Freeway Agreements. Do not list, under this heading, road approaches from conventional highways or frontage roads. Costs will be valued under "Damages" or "Construction Contract Work" if appropriate.

All access openings must be confirmed by Region/District Project Development. The necessity for locked gates or temporary openings must be fully explained in the parcel appraisal. All listed access openings will be properly delineated on the Appraisal Map and included on the List of Access Openings in the Appraisal Report.